IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE T.R.RAMACHANDRAN NAIR

THURSDAY, THE 5TH JULY 2007 / 14TH ASHADHA 1929

OP.No. 33889 of 2000(H)

PETITIONER:

G.SANKARANARAYANA PILLAI,
TECHNICAL ASSISTANT (PFA) RTD.,
KOCHUMADATHIL, THRIPPARAPPU,
KANAYAKUMARI DISTRICT.

BY ADV. SRI.M.V.BOSE
SRI.CHERIAN VARGHESE

RESPONDENTS:
----

1. **STATE OF KERALA, REP.BY THE**
SECRETARY TO GOVERNMENT,
HEALTH AND FAMILY WELFARE DEPARTMENT,
GOVERNMENT SECRETARIAT,
THIRUVANANTHAPURAM.

2. **THE ACCOUNTANT GENERAL (KERALA),**
THIRUVANANTHAPURAM.

3. **THE DIRECTOR OF HEALTH SERVICES,**
THIRUVANANTHAPURAM.

4. **THE DIRECTOR OF MUNICIPALITIES,**
THIRUVANANTHAPURAM.

BY GOVERNMENT PLEADER SRI.V.T.K.MOHANAN

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 05/07/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ORDER ON CMP. NO.57908/2000 IN OP. NO.33889/2000

CLOSED

05.07.2007 SD/- T.R.RAMACHANDRAN NAIR, JUDGE

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1:- COPY OF THE ORDER DT. 5.4.68 OF THE 1ST RESPONDENT.

EXT.P2:- COPY OF THE OBJECTION LETTER DT. 17.6.96 OF THE 2ND RESPONDENT.

EXT.P3:- COPY OF THE SCHEDULE OF THE ACT 14 OF 1994 OF THE KERALA LOCAL FUND AUDIT ACT, 1994.

EXT.P4:- COPY OF THE ORDER G.O.(MS) 243/75/LA & SWD DT. 27.9.75 FROM LOCAL ADMN. & SOCIAL WELFARE DEPARTMENT.

EXT.P5:- OP G.O.(P) NO.22/93/P&ARD DT. 20.3.1993.

EXT.P6:- COPY OF THE CHALAN RECEIPT.

EXT.P7:- COPY OF THE LETTER DT. 17.10.98 TO 1ST RESPONDENT.

EXT.P8:- COPY OF THE REPRESENTATION DT. 1.9.99 FROM THE PETITIONER BEFORE THE 1ST RESPONDENT.

EXT.P9:- COPY OF THE JUDGMENT IN OP. NO.22911/99-C DT. 10.9./99.

EXT.P10:- COPY OF THE LETTER TO PETITIONER FROM THE 1ST RESPONDENT DT. 27.12.99.

EXT.P11:- COPY OF THE ORDER NO.A4-102250/95 DHS. DT. 28.8.96 OF 3RD RESPONDENT.

EXT.P12:- COPY OF THE G.O.(P) 369/87/FIN DT. 31.3.87.

EXT.P13:- COPY OF THE ORDER G.O. (P) 361/89/FIN DT. 10.8.89.

EXT.P14:- COPY OF THE ORDER G.O.(P) 228/01/FIN DT. 2.2.01.

EXT.P15:- COPY OF THE JUDGMENT IN OP.13802/98 DT. 18.3.04.

/TRUE COPY/

tss

T.R.RAMACHANDRAN NAIR, J.

~ ~ ~ ~ ~ ~ ~ ~ ~ ~ ~ ~ ~ ~ ~

O.P.No. 33889 of 2000 (H)

~ ~ ~ ~ ~ ~ ~ ~ ~ ~ ~ ~ ~ ~ ~

Dated this the 5th day of July, 2007

J U D G M E N T

The petitioner is apparently aggrieved by the non reckoning of his service for more than 23 years under the Municipal Common Service for the purpose of granting pension.

2. The short facts are:-

The petitioner entered service as Health Overseer on a regular basis in the Thiruvananthapuram Municipal Corporation on 12/01/1961. He was later promoted as Health Assistant Grade-I on 20/11/1973 and as Health Inspector Grade-II on 11/07/1974. Later he was promoted as Health Inspector Grade-I and posted to Perumbavoor Municipality. Thereafter, he was transferred to Aluva Municipality on 17/04/1984. While working there, he got appointment as Technical Assistant (PFA) through Kerala Public Service Commission in the department of Health Services. While working there he retired from service on 29/02/1996. The service rendered by him in the municipal

service is 23 years and eight months. Counting the same, he has a total continuous pensionable service of 35 years and one month and 19 days. It is the admitted fact that the municipal service is also pensionable service.

3. Initially, an objection was raised by the second respondent regarding the counting of the above period of service as per Ext.P2. The objection noted is that the service period in Local Fund/Local Bodies will qualify for pension only on specific orders of the Government. It may be noted herein that actually this objection was raised when his pension papers were prepared by the third respondent after reckoning his total service of 35 years one month and 19 days. But the objection raised appears to be under Rule 20 Part III K.S.R, which specifically provides that "service paid from local fund will qualify for pension only on specific orders of the Government". As far as the Municipal employees are concerned, the relevant Rules prescribed for the payment of pension is Kerala Municipal Employees Death-Cum-Retirement Benefits Rules 1967 and, Rule 7(2)(b)(i) stipulates that the pension contribution in respect of all employees

calculated at 1/6th of their pay plus dearness pay has to be remitted to the pension fund. Accordingly, the petitioner's contribution was also remitted every month. As per Rule 4 of the above rules Part III of the K.S.R as amended from time to time will apply mutatis mutandis to an employee governed by the Pension Scheme under these rules in the matter of death-cum-retirement benefits.

4. The Government has been giving benefit of counting similar service in the Municipal Common Service in respect of Municipal Commissioners who were appointed from the Municipal Common Service and the petitioner has produced Ext.P4 to prove the same. Government granted sanction for counting for purposes of pension such portion of the service of 14 Municipal Commissioners rendered in the Municipal Establishment prior to their appointment as Commissioner as would count under the rules applicable to them after levying pension contribution. It was also directed that the pension contribution will be adjusted from the contribution made by the concerned Municipalities towards their Provident Fund Accounts. Ext.P5 Government

Order also is produced to show that in respect of the post of Joint Director of Municipal Administration (Health) the Government made certain amendments of the Special Rules to count Municipal Common Service with Government Service to determine the length of service. Ext.P6 will show that the pension contribution in respect of the petitioner was remitted in lump-sum on 14/10/1999 by the Director of Municipal Administration to the general revenue.

5. Thereafter, the Director of Health Services moved the Government requesting that orders may be issued for enabling the service of the petitioner to be counted for the sanction of pensionary benefits. The petitioner also filed a representation as per Ext.P8. Thereafter, he approached this Court by filing O.P.No.22911/1999, which was disposed of by judgment dated 10/09/1999. A direction was issued to the Government to consider and pass orders on Ext.P4 representation of the petitioner, before the time limit prescribed in the judgment. The request of the petitioner was to pass appropriate special orders under Rule 20 Part III K.S.R.

6. In answer to Ext.P4 representation in O.P.No.22911/1999, Ext.P10 has been communicated to the petitioner, which is under challenge in this original petition. In Ext.P10, the petitioner has been informed that the appointment in the Municipal Department cannot be considered as a continuous post in the Health Department and, hence, Rule 159 Part-I Kerala Service Rules cannot be made applicable in his case.

7. Ext.P11 is the order sanctioning pension to the petitioner. Along with I.A.No.11311/2004, the petitioner has produced Exts.P12 to P15. Ext.P12 is the copy of G.O.(P) No.369/87/Fin, dated 31/03/1987. That governs the sanction given by the Government for counting the period of service rendered by a State Government employee and an employee of states autonomous bodies who is allowed to be absorbed in Government of India/Autonomous Body for payment of pension. Ext.P13 is an order issued in modification of the earlier order dated 30/12/1978. This order governs grant of retirement benefits to government servants transferred to Autonomous Bodies/Public Undertakings on their own volition. The

Government as per Ext.P14 ordered that Rule 20 Part III K.S.R will be amended by adding a note, which is in the following terms:-

> "Notwithstanding anything contained in the above Rule that the past service put in by Government employees/Teachers in Panchayaths/Municipal Common Service/Universities etc. prior to entry in State service and vice versa will be reckoned as qualifying service for pension & DCRG. The amount credited to/creditable to a pension fund for the service rendered by the employee at market rate of interest (@ 10% at present) on compounding basis calculated for the period he worked with the former employer, has to be paid by the former employer in lump at the time of such appointment of the employee to the State service and vice versa. This will not be applicable to appointments to or from Public Sector Undertakings or similar bodies as they are constituted under Companies Act or by separate legislation of the Central/State Governments.
>
> The benefit of this order will be applicable to the retirements after the date on this orders and the pension cases already settled or pending settlement on

administrative reasons will not be considered on any account."

8. In view of the above order, the past service put in by government employees in Municipal Common Service, prior to the entry in State service will be reckoned as qualifying service for pension and D.C.R.G. But the benefit of the same is restricted to retirement after the date of the order. Ext.P15 is the judgment of this Court in O.P.No.13802/1998, where it was declared that aided school service can be counted for the purpose of counting pension under the Rubber Board.

9. A reading of Ext.P10 shows that the Government has not addressed the question in the correct perspective. The objection raised in Ext.P2 is that the service period in Local Funds/Local Bodies will qualify for pension only on specific orders of Government. The case of the petitioner was recommended by the Director of Health Services to the Government for counting his service under Municipal Common Service for sanction of pension. This is evidenced by Ext.P7. The pension contribution

in respect of him has also been remitted to the Government Treasury going by Ext.P6. The reliance placed on Rule 159 Part-I K.S.R, in the circumstances does not appear to be correct. Rule 159 Part-I K.S.R reads as follows:-

> "Persons transferred to Government service from a Local Fund which is not administered by Government will be treated as joining a first post under Government and their previous service will not count as duty performed. The Government may, however, allow previous service in such cases to count as duty performed on such terms as it thinks fit."

10. A reading of the Ruling therein also would show that the same governs the fixation of pay of an officer transferred from a Local Fund institution not administered by Government to Government service. As far as the petitioner is concerned, his pay was protected. It was counted for the purpose of increment, pay revision and other benefits. Therefore, there was no scope for applying Rule 159 Part-I K.S.R for the purpose of objecting the sanction, evidently. The provisions of Rule 20 Part-III K.S.R

were the relevant provisions which governed the matter. What was required was only a special order like Ext.P4 for enabling the petitioner to count his service under the Municipal Common Service for reckoning the same for granting sanction of pension. This was not considered by the Government in answer to his representation. Further, the note now added to Rule 20 Part-III K.S.R, stipulates that the past service put in by an employee in the Municipal Common Service prior to entry in State service will be reckoned as qualifying service for pension and D.C.R.G. Therefore, the object of the provision is evident from the note itself. The clear purpose and object of the note is for the benefit of the pensioner and if that is the object, there is no justification to restrict the benefit to persons who have retired after the date of the said order. This principle is well settled by various decisions of the Supreme Court, as in **D.S.Nakara & others vs.Union of India [AIR 1983 SC 130]**. The pensioners form a class and when they form a class there cannot be any discrimination as far as the granting of liberalised benefits are concerned. It was held therein that all the retirees are entitled for the benefit of the liberalised formula. It was observed that

“if the pensioners form a class, their computation cannot be by different formula affording unequal treatment solely on the ground that some retired earlier and some retired later.”

11. Here one thing to be noticed is that, the petitioner was entitled for pension for the service rendered in the Health Department. The same is an accrued retiral benefit. The amendment to Rule 20 Part III K.S.R, amounts to a modification of qualifying service for pension. It is not a new scheme but a modification of a determinative factor, namely, qualifying service. Hence the principles stated in AIR 1983 SC 130 squarely applies here. Modification only amounts to liberalisation.

In the light of the above legal position, the petitioner is entitled for the benefit of reckoning his past service for the purpose of pension and D.C.R.G. Government has been granting similar benefits even prior to the addition of the note as evidenced in Ext.P4. This was especially on the basis of the enabling provisions under Rule 20 of Part-III K.S.R. There

cannot therefore be a distinction between two sets of persons when such formal orders are passed by the Government. Admittedly, the beneficiaries of Ext.P4 are also persons coming under the Municipal Common Service before their appointment as Municipal Commissioners. Therefore, the denial of such benefit to the petitioner on that score also will be discriminatory and violative under Article 14 of the Constitution. Hence, Ext.P10 is quashed and the first respondent is directed to pass appropriate orders counting the past service of the petitioner in Municipal Common Service for the purpose of computing the pension and other retirement benefits. The same shall be done within a period of three months from the date of receipt of a copy of the judgment.

The original petition is disposed of as above. No costs.

T.R.RAMACHANDRAN NAIR,
Judge

ms

T.R.RAMACHANDRAN NAIR, J.

~ ~ ~ ~ ~ ~ ~ ~ ~ ~ ~ ~ ~ ~ ~

O.P.No. 33889 of 2000 (H)

~ ~ ~ ~ ~ ~ ~ ~ ~ ~ ~ ~ ~ ~ ~

J U D G M E N T

5th July, 2007